IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 369 of 2003

Date of Decision : 5.10.2007

Hiri Ram & Others …Petitioners.

v.

State of H. P. & Others …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *Yes*

For the petitioners : Mr. B.P. Sharma, Sr. Advocate with Mr. Sandeep Vashisth, Advocate.

For respondents 1 & 2 :Mr. Ashok Chaudhary, Addl. A. G.

For respondents 3 & 4: Mr. Jai Ram Sharma, Advocate vice Mr. Neel Kamal Sood, Advocate.

Sanjay Karol, J (Oral).

The present writ petition has been filed inter alia praying for quashing of the letter dated 15.3.2003 (Annexure P-3) with a direction that felling permission be accorded to the petitioners and also the condition of extension fee imposed in the order dated 6.1.2003 (Annexure P-2) be struck down.

Facts necessary for adjudicating the present writ petition are as under:-

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

Petitioners are agriculturists owning and possessing land in Tehsil Kasauli, District Solan, H.P. on which there is forest produce i.e. fully grown trees of different categories and species.

The State of Himachal Pradesh has enacted the Himachal Pradesh Land Preservation Act, 1978 (hereinafter referred to as 'the Preservation Act') as also the Himachal Pradesh Forest Produce (Regulation of Trade) Act, 1982 (hereinafter referred to as 'the Trade Act') to regulate the activities of felling and sale of the trees grown on the private land. No tree can be commercially exploited by a private owner and the State through its Agent/instrumentality can buy and fell the standing trees on private lands. In accordance with the provisions of the Preservation Act, the State of Himachal Pradesh prepares and notifies working plan of a particular area allowing and commercial extraction of the forest produce including the trees from time to time. It is commonly known as the 10 years felling scheme or programme. For the area in question, the State notified 10 years felling programme expiring on 31.3.2002.

Under the Trade Act, the State of Himachal Pradesh has also framed the Himachal Pradesh Forest Produce (Regulation of Trade) Rules, 1982 (hereinafter referred to as 'the Rules'). Rule 4 lays down the procedure for the purchase of the forest produce offered for sale by the owners as envisaged u/s 5 of the Trade Act. It requires an application, in Form-II to be

moved by the owner offering the forest produce for sale to the Agent i.e. the State through its instrumentality. Such application is to be forwarded by the owner to the Divisional Forest Officer concerned. The concerned officer is required to refer the matter to the revenue officials for demarcation of the land and marking of the trees for which the permission is sought. The same is required to be carried out in the presence of the forest officials, revenue officials, land owners and also the nominee of the Forest Corporation, which is the instrumentality of the State. Rule 4(4) fixes the obligation upon the owner to get the land demarcated. Once the demarcation is carried out then the Range Officer is duty bound to prepare the list and refer the same to the superior officer for grant of the felling permission and passing of the felling order. This is so provided in Sub Rules (5), (6) & (7) of Rule 4.

In the present case, all applications in Form-II were moved by the petitioners well within time and as per affidavit filed by the State, even the process of the demarcation, as envisaged under Rule 4(4) stood completed as on 3.3.2002.

Since the feeling order was not issued by 31.3.2002, vide letter dated 1.11.2002, the petitioners were constrained to write to the Divisional Forest Officer bringing it to his notice that due to non-availability of revenue staff even though marking and demarcation was completed in the month of March, 2002 itself, but the case could not be prepared/completed for obtaining

felling orders, therefore, the extension be accorded and felling order issued accordingly.

Vide letter dated 15.3.2003 (Annexure P-3), petitioners were informed by the respondents that in terms of the Government decision as conveyed vide letter dated 17.2.2003, the petitioners were liable to pay a sum of Rs.1,75,695/- as extension fee charges (@Rs.100/- per cubic mtr.) and only then the felling order would be issued. Therefore, the petitioners were constrained to move the present petition.

During the pendency of the present petition, the petitioners furnished a security in the shape of FDR and only then the felling permission was finally accorded on 29.3.2004. This action of the respondents in demanding/accepting the said amount is now a subject-matter of challenge in the present writ petition. It is pertinent to point out that after the issuance of the felling order, during the pendency of the present writ petition, the trees were felled and disposed of by the Forest Corporation in accordance with the Rules and the Act. Vide communication dated 1.1.2003, Principal Chief Conservator of Forests, Himachal Pradesh accorded sanction for extension in the working period for the purposes of issuance of felling orders of the trees belonging to the petitioners. This was, however, subject to realization of extension fee in terms of Government order dated 10.9.2002.

The extension fee is being charged by the respondents on the basis of the office order dated 10.9.2002 issued by the Principal Secretary (Forests) stipulating that in case the trees are not felled within the prescribed year, the Principal, Chief Conservator of Forests, would be empowered to extend the period upto one year subject to payment of extension fee.

It is the admitted case of the parties as is evident from the affidavit filed by the State that as on 3.3.2002 the entire process of demarcation of the land and marking of trees had been completed by the parties. An attempt has been made to show that the delay is attributable to the petitioners. However, perusal of the record shows that there is nothing on record to even suggest as to why the felling orders were not issued by the respondents well within time. As per Rule, the only obligation caste upon the land owner is to move an application in Form-II and get the land demarcated along with the concerned officials. Admittedly, this was carried out well within time. Thereafter, Rules 5 & 6 caste an obligation on the forest officials to process the same and pass orders there upon. In the present case, there is nothing on record to suggest that the petitioners had ever defaulted in fulfilling their statutory obligation. It is also not the case of the respondent-State that the steps were not taken by the petitioners well within time to complete the statutory formalities. Under the circumstances, the

officials were enjoined with duty to perform their statutory obligations. No explanation whatsoever is forthcoming as to why the said action was not taken by the respondents. The learned Addl. Advocate General has gone through summoned record and has not been able to point out any delay attributable to the petitioners. In fact the movement of the file shows that there is lethargy and laxity on the part of the officials in dealing with the case. During the course of hearing, the learned Advocate General fairly conceded to this position and admitted that petitioners do not appear to have defaulted.

That the petitioners had moved an application seeking extension of time on 1.11.2002, much after 31.3.2002 cannot be taken as a defence by the respondents who have, miserably failed in discharging their duties. Letter dated 1.11.2002 is not an admission by the petitioners of the delay attributable to them. In fact it is clearly mentioned that inspite of the paucity of the revenue staff , the demarcation and marking was completed well within time, however, the case could not be processed and finalized before the completion period. Since the working plan or the 10 years felling programme had come to an end on 31.3.2002, under these circumstances the petitioners were compelled to seek an extension of the working period failing which, due to statutory prohibition the petitioners' forest produce could not have been commercially extracted and sold to the respondent-State in accordance with law.

In any case office order dated 10.9.2002 has to be applied prospectively and not retrospectively for the reasons that clause 10 provides that the application for demarcation of the land from which the felling is proposed has to be filed atleast one year in advance from the prescribed year of felling. In the facts this condition cannot be applied. This obviously is to enable the respondents to process the same. In the present case, all formalities and obligations stood complied well within time. Had the respondents given permission in time there would have been no question of extension. There cannot be extension before permission. This also is the understanding of the respondent-State as is evident from the affidavit dated 20.9.2007 filed by the petitioners annexing the extension permissions dated 31.3.2004 & 31.3.2005 pertaining to other land owners, granted by the State wherein no extension fee has been charged. There is no rebuttal to the same.

Keeping in view the totality of the circumstances and the material on record, it cannot be said that the petitioners have defaulted in complying with the statutory provisions therefore, they cannot be fastened with the liability of extension fee. The action of the respondents is totally arbitrary, unjustified and to this extent needs to be quashed. The condition of extension fee in the orders dated 6.1.2003, 1.1.2003 and 29.3.2004 passed by the respondents is quashed.

As a result of the aforesaid discussion, the amount deposited by the petitioners as extension fee with the respondent-Corporation, pursuant to the demand made by the respondents in the shape of FDR is directed to be released to the petitioners along with interest accrued thereupon within a period of two weeks from today. The challenge to the office order dated 10.9.2002 was not pressed by the learned counsel for the petitioners at the time of hearing. Therefore, the same has not been considered. The present writ petition is disposed of accordingly.

(Sanjay Karol),
Judge.

October 5, 2007
(rana)